

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arya Sundar	Team: Team # 2	CCRB Case #: 200306612	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/27/2003 5:00 PM	Location of Incident: § 87(2)(b) Manhattan	Precinct: 34	18 Mo. SOL 2/27/2005	EO SOL 2/27/2005	
Date/Time CV Reported Thu, 08/28/2003 1:27 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/28/2003 1:27 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Fabio Nunez	01432	925839	34 Precinct
2. POM Carl Benett	29180	929704	34 Precinct
3. POM Harvin Hart	00829	924670	34 Precinct
4. POM Luis Perez	12529	924327	34 Precinct

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Denise Connolly	00869	903669	34 Precinct

Officer(s)	Allegation	Investigator Recommendation
A.POM Luis Perez	Abuse: PO Luis Perez arrested § 87(2)(b)	§ 87(2)(b)
B.POM Luis Perez	Force: PO Luis Perez used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Harvin Hart	Force: PO Harvin Hart used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Fabio Nunez	Force: PO Fabio Nunez used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Carl Benett	Force: PO Carl Benett used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Carl Benett	Force: PO Carl Benett used physical force against § 87(2)(b)	§ 87(2)(b)

Synopsis

This case generated from a complaint filed at the CCRB on 8/28/03 and at IAB on 9/5/03. On 8/27/04, officers from the 34 precinct responded to a call for an emotionally disturbed woman who had barricaded herself in her apartment at § 87(2)(b) Manhattan. This address corresponds to an apartment building where complainant § 87(2)(b) resides, and when the officers arrived, § 87(2)(b) was asked to inform the officers about the status of the disturbed woman who had at this point had released gas into the building hallway. As § 87(2)(b) was providing information, he stood in a vestibule at the entranceway to the apartment building with Sgt. Connolly. Following this interaction with Sgt. Connolly, PO Luis Perez approached § 87(2)(b) and said, “who are you?” § 87(2)(b) attempted to explain that he lived in the building, however PO Perez commanded him to move. § 87(2)(b) continued to explain why he was in the vestibule, however he was immediately seized, pushed into a wall, and arrested for disorderly conduct (Allegations A and B). § 87(2)(b) initially identified PO Fabio Nunez as his arresting officer, however the investigation revealed that PO Perez was actually the arresting officer. During his CCRB interview, PO Perez stated that he arrested § 87(2)(b) for refusing to move from the vestibule, however the summons listed “violent or threatening behavior” as the reason for the arrest. § 87(2)(g)

It should be noted that IAB investigators conducted a callout on 9/9/03 during which time they photographed cuts and bruises that § 87(2)(b) received from the handcuffs. The IAB case file was subsequently forwarded to the CCRB (Encl. 3A – 3G).

Summary of Complaint

§ 87(2)(b) a Hispanic male, was a § 87(2)(b) § 87(2)(b) at § 87(2)(b) at the time of the incident. He stood at approximately 5' 7" and weighed approximately 150lbs. § 87(2)(b) was interviewed by IAB on 9/9/03 following a call that he placed to the command center. He stated that on 8/27/04 there was a gas leak in his building and that officers were called for assistance. When the officers arrived, Sgt. Denise Connolly asked § 87(2)(b) for assistance. At her direction, § 87(2)(b) began translating for the officers and helped them try to shut off the gas. As he did so, he was approached by PO Nunez, PO Hart, PO Benett, and an unidentified officer. These officers asked, "who are you?" He then started looking for Sgt. Connolly and the officers started pushing him. He then said, "You can't push me," but the officers then pushed him into a wall and arrested him. He was issued a disorderly conduct summons and released. He also alleged that the officers pushed his grandmother as she rushed to the scene of his arrest.

§ 87(2)(b) was interviewed by the CCRB at § 87(2)(b) Manhattan, on 9/30/03 (Encl. 5A – 5D). At approximately 1:00am on 8/27/03, § 87(2)(b) was inside his family’s apartment at § 87(2)(b). One of his downstairs neighbors, who had a history of significant emotional instability, was causing problems for the other neighbors in the building. § 87(2)(b) who is § 87(2)(b)’s grandmother, lives on the same floor as this emotionally disturbed woman and she called § 87(2)(b)’s apartment and informed

the family that this woman was releasing gas from her apartment. The neighbors believed that she was going to ignite the gas, therefore, the superintendent § 87(2)(b) called the fire department and the police responded. § 87(2)(b) decided to go downstairs because most of the tenants in the building were Spanish speakers and he thought they would have had difficulty in assisting the officers. Being that § 87(2)(b) was fluent in both English and Spanish, he felt that he could have been of assistance.

Several officers responded to the call. Sgt. Denise Connolly attempted to speak to the emotionally disturbed woman, however the woman yelled incoherently and was unresponsive to Sgt. Connolly. Sgt. Connolly asked, “can someone volunteer to give us some information” and § 87(2)(b) stated that he could help. He informed Sgt. Connolly that the woman had a history of mental problems and had been throwing pots and pans out her window. Sgt. Connolly listened to § 87(2)(b) and they developed “a rapport”. They spoke to each other for about five or ten minutes and § 87(2)(b) believed that he had demonstrated his good will by providing assistance. At this point, § 87(2)(b) was standing near the mailboxes inside a vestibule that is located in the entrance to the apartment.

Eventually, Sgt. Connolly exited the vestibule. She did not give § 87(2)(b) any orders to leave the scene or not stand in the vestibule. After she walked away PO Perez approached him, and said, “who are you?” According to § 87(2)(b) this officer was very nasty, but § 87(2)(b) simply responded by saying that he was helping Sgt. Connolly. When § 87(2)(b) turned to see if she was nearby however, he realized that she had walked away. PO Benett was standing to § 87(2)(b)’s right and the other officers were scattered around the vestibule, in close proximity to him. Again, PO Perez asked, “who are you” in a strong tone. § 87(2)(b) said, “it’s OK. I’m just trying to help.” PO Perez then said, “you have to move,” and immediately pushed § 87(2)(b) with both hands. § 87(2)(b) pulled his hands back and responded by saying, “what are you doing, you’re not supposed to...” however he was not able to finish his sentence because three other officers grabbed him. Just before they rushed after him, one of them said, “he’s resisting arrest!” § 87(2)(b) was immediately pushed against the wall in the vestibule that contains the mailboxes and was pinned there. He struck the mailboxes with his chest and the right side of his face as a result of the force. At this point Sgt. Connolly was not in sight and § 87(2)(b) came rushing from the outside porch yelling, “That’s my grandson!” PO Benett then said, “you stay away,” and pushed her back against a wall. As she approached, § 87(2)(b) also told her to stay back, however PO Benett grabbed her arm and pushed her towards the corner of the vestibule. The officers that were holding § 87(2)(b) then pushed him into the wall again. § 87(2)(b) was able to turn his head slightly and he then saw Sgt. Connolly standing in the hallway where the apartments were. He yelled to her, “Sergeant help me, help me! What are they doing?” She did not respond, however, and did not stop the arrest. An officer then placed § 87(2)(b) in handcuffs and he was taken out of the building and to a patrol car.

§ 87(2)(b) stated that the officers that arrested him were within “an arm’s distance” of him and Sgt. Connolly when they were speaking to each other. When asked if he thought that the officers heard him and Sgt. Connolly develop a rapport, he said, “you couldn’t miss it.” § 87(2)(b) was not given any indication that he could not stand where he was standing by Sgt. Connolly, and she was the only officer that he had spoken to until PO Perez approached him. At this point, § 87(2)(b) was standing nearby and there were several other witnesses that saw the officers’ actions.

§ 87(2)(b) had waited in the patrol car for about ten to fifteen minutes before he was issued a summons that was signed by PO Nunez. The summons was actually given to him by PO Hart who instructed § 87(2)(b) to sign the summons. He was then released from police custody with a summons that listed “violent or threatening behavior” as his violation.

It should be noted that throughout § 87(2)(b)’s interview, he referred to his arresting officer as PO Nunez. As previously noted, the CCRB investigation revealed that the officer who approached and arrested § 87(2)(b) was PO Perez, not PO Nunez.

Results of Investigation

§ 87(2)(b) – Victim/Witness (Encl. 6A – 6C)

§ 87(2)(b) a retired Hispanic female, was interviewed at § 87(2)(b) on 9/30/03. She was § 87(2)(b) at the time of her interview.

§ 87(2)(b) stated that, on 8/27/03, an emotionally disturbed woman that lives on her floor opened the gas valve in her apartment and barricaded herself inside. The police department was called and when they responded they tried to gather information from the woman. § 87(2)(b) then called her daughter, § 87(2)(b)'s mother, who lived upstairs and informed her about the gas being leaked. § 87(2)(b) then went downstairs and facilitated communication between the officers and superintendent, § 87(2)(b). A crowd had gathered on the scene and the officers continued efforts to calm the disorderly woman down. § 87(2)(b) exited the building and remained outside while Sgt. Connolly continued talking to § 87(2)(b). They conversed for several minutes in the vestibule and eventually an officer approached § 87(2)(b) and told him to move. § 87(2)(b) said, "what?" as if he did not understand. § 87(2)(b) said that § 87(2)(b) is slightly deaf in one ear and that he appeared confused by the officer's request. There were three officers inside the vestibule at this point and they were standing in close proximity to § 87(2)(b). Almost immediately § 87(2)(b) observed three officers push § 87(2)(b) into the mailboxes, causing him to strike his face against the wall. § 87(2)(b) ran inside yelling, "that's my son, that's my son!" An officer, identified through the investigation as PO Benett, grabbed her arm and prevented her from approaching. The three officers that pushed § 87(2)(b) placed him in handcuffs and escorted him outside. § 87(2)(b) was screaming at the officers to release § 87(2)(b) as two of them took him to the patrol car. The officer that restrained § 87(2)(b) remained behind and Sgt. Connolly did not involve herself with the incident. § 87(2)(b) believed that Sgt. Connolly was "right there" when the officers arrested § 87(2)(b). Eventually § 87(2)(b) was released to his father and he returned to his apartment.

§ 87(2)(b) – Witness (Encl. 7A – 7C)

§ 87(2)(b) a Hispanic Female, was interviewed on 9/30/03 at § 87(2)(b). She was § 87(2)(b) at the time of her interview. Prior to her interview, she drafted a handwritten letter which simply reported that she saw § 87(2)(b)'s arrest. § 87(2)(g)

At 1:30am on 8/27/03, § 87(2)(b) was sleeping in her bedroom when she awoke to police lights and commotion. Police officers came to her door and asked if they could use her fire escape in order to allow them to investigate an unruly neighbor who had barricaded herself in the apartment which was next door to § 87(2)(b)'s apartment. § 87(2)(b) allowed the officers to enter and an officer went to the rear of her apartment to investigate the neighbor from her fire escape.

At this point, § 87(2)(b) was in the entrance vestibule talking to several officers. § 87(2)(b) stood in the doorway of her apartment and she saw other people in the area, including § 87(2)(b). There were three officers in the vestibule and one of the officers approached § 87(2)(b). This officer said, "what are you doing here?" § 87(2)(b) responded by saying "what?" as if he did not hear the question or did not understand. Three officers then moved in on him, even though he "did not do anything", and they then pushed him into the mailboxes and placed him in handcuffs. These officers attracted the attention of the other officers, however Sgt. Connolly was not involved. § 87(2)(b) could not remember where she was, but stated that she was in the building. A "thin" black officer escorted § 87(2)(b) to a patrol car outside the building. § 87(2)(b) began screaming and crying as PO Benett escorted § 87(2)(b) to the patrol car. The three officers that pushed him into the mailbox remained inside the building. They told the Sergeant

that § 87(2)(b) had been disorderly and combative, but according to § 87(2)(b) he was not. § 87(2)(b) did not touch or strike an officer at any time and was only trying to talk to the officers when he was arrested. He did not appear to have a chance to move or explain himself because the officers arrested him “instantly”.

§ 87(2)(b)'s grandmother § 87(2)(b) approached one of the Hispanic officers who had pushed § 87(2)(b) against the mailboxes as he was being taken to the patrol car. She pleaded with him to not take § 87(2)(b) by saying, “that’s my son” and then this officer grabbed § 87(2)(b)'s arm. § 87(2)(b) pushed his arm away saying, “you can’t do that to me, you can’t grab me”. When § 87(2)(b) went outside to find out what was happening, she saw § 87(2)(b) on the ground crying.

§ 87(2)(b) – Witness (Encl. 8A – 8C)

§ 87(2)(b) a Hispanic male was interviewed at § 87(2)(b) Manhattan on 9/30/03. § 87(2)(b) is the superintendent of the apartment building at § 87(2)(b) and was § 87(2)(b) at the time of his interview.

§ 87(2)(b) stated that on 8/27/03, there was an emergency in his building and he had to call the police. When the police arrived he was required to inform them about the nature of the call, but since he does not speak English, he asked § 87(2)(b) to translate for the officers. Most of the civilians were outside at this point and § 87(2)(b) was standing in the vestibule because he was initially helping the officers. Eventually one of the officers approached § 87(2)(b) and asked him, “who are you? What are you doing here?” The officer appeared to want § 87(2)(b) to move from the area and § 87(2)(b) appeared to have some difficulty hearing the officer’s command. § 87(2)(b) said that § 87(2)(b) only said, “what?” as if he did not understand the officers, but three of them grabbed him and shoved him into the mailboxes. § 87(2)(b) did not strike or push an officer and did not make any effort to resist arrest. The only movement that he made was caused by the force used to push him into the mailboxes. § 87(2)(b) stated that he could not understand why the officers would do this because § 87(2)(b) did not behave threateningly.

§ 87(2)(b) said that he saw Sgt. Connolly speaking with § 87(2)(b) prior to his arrest. One officer that escorted § 87(2)(b) out of the building told § 87(2)(b)'s grandmother to “calm down” but § 87(2)(b) did not see the officer use force against her.

§ 87(2)(b) – Witness (Encl. 9A – 9D)

§ 87(2)(b) provided a handwritten affidavit to § 87(2)(b) which he then provided to the CCRB. Her statement was written in Spanish and notarized.

§ 87(2)(b) stated that, on 8/27/03, the building superintendent called the police after a disorderly woman released gas into the apartment hallway and threw plates out of her window. Police and firemen arrived, and a female police officer (believed to be Sgt. Connolly) addressed the civilians. This officer said that she felt safe in the community because the people are good. § 87(2)(b) then provided this officer with details about the psychological condition of the disorderly woman. All of the civilians were cooperating so that the officers could bring the woman to the hospital. Suddenly “PO Nunez” and “PO Harril” (sic) told § 87(2)(b) to move, and he said, “What?” It appeared as if § 87(2)(b) did not hear what the officers were saying, but the officers then arrested § 87(2)(b) against the mailboxes and accused him of “disobedience” and resisting arrest. § 87(2)(b) was shocked because § 87(2)(b) was initially cooperating and assisting the officers by providing information to Sgt. Connolly.

§ 87(2)(b) then began to cry when she saw § 87(2)(b) arrested. An officer grabbed her by the shoulders and moved her to the side. Several people told the officer that she suffers from a heart problem therefore the officers had EMS assist her.

PO Carl Benett – Witness Officer (Encl. 12A – 12D)

PO Carl Benett was interviewed at the CCRB on 11/17/03.

PO Benett was assigned as the Sergeant's Operator on 8/27/03. He worked from 1500 x 2335 with Sgt. Connolly and they operated a marked patrol car. All officers on the scene were in uniform.

His memo book entries consisted of one entry on his fly sheet reading, "at TPO altercation took place where an officer had to apprehend a male individual who was arrested for OGLA." At 1620 10-54, § 87(2)(b) It was handled by sector D and EDP was transported to § 87(2)(b)

PO Benett stated that at approximately 4:20pm on 8/27/03 his unit was called to respond to an emotionally disturbed person (EDP) at § 87(2)(b) Manhattan. When the unit arrived, the EDP was in her apartment and "barricaded". Only § 87(2)(b) was there at the time and a crowd had not yet gathered on the scene. § 87(2)(b) was initially helpful and he was informing the officers about the EDP's condition. He was addressing all of the officers, including PO Perez, and was assisting the officers for about a half an hour. The officers called ESU and waited for them to arrive. After some time, PO Perez approached § 87(2)(b) and asked, "who are you?" He came "pretty close" to § 87(2)(b) and they were standing in the vestibule in front of the mailboxes. According to PO Benett, § 87(2)(b) responded, "I'm somebody special." PO Perez then asked § 87(2)(b) to exit the vestibule and "was talking with his hands". PO Benett assumed that § 87(2)(b) might have felt threatened by these gestures because he then hit PO Perez's hands. With PO Hart's assistance, PO Perez then "took § 87(2)(b) to the ground," and placed him in handcuffs. As he tried to do this, § 87(2)(b) resisted by pulling his arms forward. He did not try to run, but said something to the effect of, "what are you doing?" as he was being handcuffed.

PO Benett was asked if the physical contact made by § 87(2)(b) appeared to be intentional or accidental. At first he said accidental but then stated that he could not tell. Sgt. Connolly was not involved in the arrest but she saw the arrest from a distance as she was walking by. PO Benett recalled that § 87(2)(b)'s grandmother, § 87(2)(b) was yelling hysterically, but not interfering with the arrest. Someone noted that § 87(2)(b) had heart problems so the officers took care in not aggravating her. PO Benett stated that he did not remember if he used any force against § 87(2)(b). He stated that none of the other officers used force against § 87(2)(b) however, and that none of the civilians tried to interfere with § 87(2)(b)'s arrest.

Sgt. Denise Connolly – Witness Officer (Encl. 13A – 13E)

Sgt. Denise Connolly was interviewed at the CCRB on 1/6/04.

On 8/27/03 Sgt. Connolly worked a 4x12 tour with PO Benett. She was in uniform and was assigned to a marked patrol car. She did not have any memo book entries pertaining to § 87(2)(b)'s arrest.

Sgt. Connolly stated that at approximately 1615 hours, she received a call for an emotionally disturbed person at § 87(2)(b) who had barricaded herself in her apartment and had released the gas line. When the officers arrived at the apartment building, § 87(2)(b) was present and began assisting the officers by informing them about the disturbed woman and her behavior. Sgt. Connolly stated that § 87(2)(b) was initially helpful and had become comfortable with the officers. ESU and EMS eventually responded and the gas was turned off. After a short while, Sgt. Connolly exited the vestibule and went into the courtyard to make a phone call. She then heard "some commotion" and when she went to investigate, she realized that her officers had placed § 87(2)(b) under arrest. She asked about what happened and PO Perez informed her that § 87(2)(b) had acted violently and threateningly towards the officers. She was also told that he refused to move when the officers told him to do so. Sgt. Connolly said that the vestibule space was tight and that workers were trying to get in and out of the vestibule at the time of the arrest. Sgt. Connolly was asked if any officer told her that § 87(2)(b) struck or slapped an officer, and she said that PO Perez had in fact reported this to her.

Sgt. Connolly stated that § 87(2)(b)'s grandmother had approached the officers and began striking them as § 87(2)(b) was being arrested. She was secured but since she began having heart problems, Sgt. Connolly requested medical attention for her. Sgt. Connolly did not recall her being pushed into a corner at any time. § 87(2)(b) flailed his arms as he was taken to the patrol car and though he was released at the scene, Sgt.

Connolly stated that she might have added the charges of OGA and resisting arrest if she had realized the severity of his actions during the incident.

PO Fabio Nunez – Witness Officer (Encl. 14A – 14D)

PO Nunez was interviewed at the CCRB on 1/8/04.

On 8/27/03 PO Nunez worked a 4 x 12 tour with PO Harvin Hart. Both officers were in uniform and were assigned to a marked patrol car. Sgt. Connolly was their patrol supervisor during this tour.

On this date, the officers responded to a call for assistance (10-85). The call directed them to report to § 87(2)(b) where a woman had barricaded herself in her apartment. ESU had been called to the scene and they soon arrived in order to safeguard the apartment. Sgt. Connolly arrived on the scene with PO Bennett approximately the same time as PO Nunez since they were following close behind. There were numerous civilians outside the location and the officers that had responded to the 10-85 were assisting ESU. PO Nunez noted that the officers were responsible for ensuring the safety of the civilians and since the officers “came inside aggressively” the officers did not have a problem in getting the civilians to make way for them.

PO Bennett, PO Nunez, Sgt. Connolly, and PO Hart were all in the process of gathering information when they observed PO Luis Perez take § 87(2)(b) into custody. PO Nunez and PO Hart went to the vestibule and assisted PO Perez but he did not see what happened prior to the arrest. PO Nunez did not hear a bang against a wall, or any conversation between § 87(2)(b) and PO Perez that prompted the arrest. PO Nunez stated that § 87(2)(b) had been “quickly” placed in handcuffs and though he resisted when he was being brought to the patrol car, he did not resist prior to being placed in handcuffs. PO Perez stated that, though § 87(2)(b) was facing the mailboxes when he was handcuffed, he was not taken to the floor at any time or struck against the wall of mailboxes. PO Perez did not see § 87(2)(b) assisting the officers at any time and stated that, with all the members of service on the scene, “there was no reason for a civilian to assist.” PO Nunez stated that he did not § 87(2)(b) establish a rapport with Sgt. Connolly or any of the other officers.

PO Nunez said that none of the civilians attempted to “rush” at § 87(2)(b) and though there were civilians in the area that were yelling and screaming, PO Nunez did not recall seeing an elderly woman claiming to be § 87(2)(b)'s grandmother. PO Nunez denied that he used any significant force against § 87(2)(b) at all and the first time that he “grabbed” § 87(2)(b) was in handcuffs. PO Nunez stated that he was not ever told that § 87(2)(b) was told to move from the vestibule or that he refused to do so.

PO Harvin Hart – Witness Officer (Encl. 15A – 15E)

PO Harvin Hart was interviewed at the CCRB on 2/23/04.

On 8/27/03, PO Hart worked a 1500 x 2335 tour with PO Nunez. PO Hart testified, in sum and substance, to the nature of the 911 call that prompted the officers to travel to § 87(2)(b) as well as the officers' collective observations thereafter. PO Hart, PO Nunez, PO Perez, PO Bennett, and Sgt. Connolly all arrived on the scene within minutes of each other, and though there was a small crowd of civilians gathered outside the entrance to the apartment building, PO Hart did not specifically recall § 87(2)(b) being present. PO Hart said that he did not see § 87(2)(b) assisting Sgt. Connolly or talking to her at any time. The officers placed a call to EMS and ESU and while they were waiting for these units to arrive, the woman threw a plate out of one of her windows. Sgt. Connolly then requested that PO Hart go the front of the building to ensure that the woman did not try to escape from the window. He remained there for about 25-30 minutes, after which time he heard a small commotion coming from the vestibule entrance of the apartment. PO Hart saw people running towards the vestibule/entrance, therefore he followed. PO Hart then saw PO Perez attempting to handcuff § 87(2)(b) however he was having trouble placing him into handcuffs because § 87(2)(b) was resisting and cursing. PO Bennett, PO Hart and PO Nunez then assisted PO Perez.

PO Nunez and PO Hart then took § 87(2)(b) to the patrol car and he was placed in the backseat. PO Hart said that PO Perez had been cut by the handcuffs when § 87(2)(b) was arrested, therefore he wanted to “put § 87(2)(b) through the system.” Nevertheless, § 87(2)(b) was released to his father with a disorderly conduct summons. PO Hart stated that he was later informed that § 87(2)(b) and PO Perez had a verbal interaction that resulted in § 87(2)(b)’s arrest. PO Hart was told that PO Perez asked § 87(2)(b) to wait outside and that § 87(2)(b) responded, “I live here. Don’t you know who I am?” PO Perez then said, “No who are you” and § 87(2)(b) then said, “I’m a very important person.” PO Hart did not know what was said at this point, but noted that the interaction resulted in § 87(2)(b)’s arrest. He could not articulate the exact reason for § 87(2)(b)’s arrest and noted that he only assisted PO Perez in what he believed was a lawful arrest.

PO Luis Perez – Subject Officer (Encl. 16A 16D)

PO Perez was interviewed at the CCRB on 3/30/04. He stood 5’ 10”, and weighed approximately 220 lbs. at the time of his interview.

PO Perez stated that, on 8/27/04, he worked a 12 x 8 tour and was assigned to a marked patrol car. He worked in uniform and was partnered with PO Riveraciedo. His memo book was as follows: 1622 hours. 10-54 EDP at § 87(2)(b) § 87(2)(b) – § 87(2)(b).

PO Perez stated that he responded to § 87(2)(b) after a call for an emotionally disturbed person came over the radio. Several units responded simultaneously, and though PO Perez could not remember if PO Benett was there, he noted that Sgt. Connolly, PO Nunez, and PO Hart had responded. When the officers arrived on the scene, they were trying to keep the vestibule clear so that the members of service could travel through without interference. According to PO Perez, § 87(2)(b) was obstructing this vestibule and refused to clear the way. PO Perez stated that he instructed § 87(2)(b) to move three or four times, however § 87(2)(b) did not move. PO Perez then approached § 87(2)(b) and instructed him to either “go outside” or “go upstairs.” § 87(2)(b) then said something to the effect of “I’m someone very important,” or “You don’t know who I am?” PO Perez said that he allowed several civilians to pass through the vestibule if they were trying to go to their apartment or some other destination, however § 87(2)(b) did not appear to have any intention to move. PO Perez said that § 87(2)(b) “might have put his hands on him,” but when asked if § 87(2)(b) had struck him or grabbed him, PO Perez said that he could not recall. He stated that he was not injured as a result of this incident.

Nevertheless, PO Perez arrested § 87(2)(b) for his refusal to move from the vestibule. When PO Perez attempted to handcuff him, § 87(2)(b) flailed his arms and resisted arrest. PO Perez could not recall the officers that assisted him, but noted that assistance was required to place § 87(2)(b) in handcuffs. He did not recall if § 87(2)(b) was ever struck against a wall or a set of mailboxes as he was being arrested. PO Hart and PO Nunez then escorted § 87(2)(b) to the patrol car and he was released with a summons. PO Perez said that he only spoke to Sgt. Connolly after § 87(2)(b) was taken to the patrol car. “At some point” Sgt. Connolly authorized the issuance of the summons and § 87(2)(b) was released.

PO Perez did not recall if § 87(2)(b) was interacting with any officers or informing them about the status of the EDP. He did not remember if § 87(2)(b) specifically interacted with Sgt. Connolly at any time prior to the arrest but noted that he was standing in the vestibule while the other civilians had gone outside into the front courtyard. PO Perez explicitly stated that § 87(2)(b) was not assisting the officers at any time when asked about § 87(2)(b)’s actions prior to his arrest. According to PO Perez, none of the civilians interfered with § 87(2)(b)’s arrest. He did not see anyone who appeared to be § 87(2)(b)’s grandmother. PO Perez reviewed the summons that indicated “violent or threatening behavior.” He said that he “felt threatened by § 87(2)(b)’s presence and feared (his) safety and that of the other officers,” because § 87(2)(b) refused to move. PO Perez denied putting his hands on § 87(2)(b) but could not definitively say if § 87(2)(b) had grabbed him in any way prior the arrest. PO Perez did not recall if the building superintendent was nearby and stated that his partner did not involve herself in the incident at all.

Police Department Documents (Encl. 17A – 17B)

Summons number § 87(2)(b) was issued to § 87(2)(b) for “violent or threatening behavior.” § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer Identification

PO Nunez was identified by the summons that was issued to § 87(2)(b) and § 87(2)(b) identified PO Nunez, PO Hart, PO Bennett, and Sgt. Connolly by name. § 87(2)(b) reported that the subject officer was PO Nunez, however all officers identified the subject officer as PO Perez. PO Perez admitted to being the officer who arrested § 87(2)(b) thus establishing himself as the subject officer.

Civilian Criminal History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Subject Officer CCRB Histories (Encl. 2A – 2D)

None of the subject officers in this case have any substantiated allegations on their CCRB records.

Conclusions and Recommendations

Undisputed Facts

The officers responded to a 911 call for assistance at § 87(2)(b) after a disorderly woman drew the attention of several neighbors. EMS and ESU were subsequently called to the scene, however they were not involved in § 87(2)(b)'s arrest. PO Perez arrested § 87(2)(b) in the vestibule of the entrance to the apartment building, however he did not write the summons which charged § 87(2)(b) with disorderly conduct, citing “violent or threatening behavior.” § 87(2)(b) received minor injuries as a result of the arrest and was not processed.

Credibility Assessment

§ 87(2)(b), § 87(2)(g)

According to § 87(2)(b) all of the officers, including PO Perez, observed the interaction between himself and Sgt. Connolly. § 87(2)(b), § 87(2)(g)

. All civilians deny that § 87(2)(b) acted threateningly or disorderly when interacting with the officers § 87(2)(b), § 87(2)(g)

§ 87(2)(b) said that PO Perez grabbed his hands immediately after telling him to move and did not allow § 87(2)(b) to explain why he was standing in the vestibule. § 87(2)(b) reacted by pulling his hands and asking, “what are you doing?” According to § 87(2)(b) this was a defensive reaction to PO Perez’s aggression which § 87(2)(b) did not expect. § 87(2)(b), § 87(2)(g)

The civilian witness stated that § 87(2)(b) only said, “what?” as he was being questioned by PO Perez. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

PO Perez and PO Nunez also stated that § 87(2)(b) was not providing information to Sgt. Connolly prior to his arrest. § 87(2)(b), § 87(2)(g)

PO Benett stated that PO Perez approached § 87(2)(b) by “talking with his hands” and that § 87(2)(b) struck PO Perez’s hands away from him. PO Hart believed that PO Perez had been injured during the arrest, however PO Perez did not report this. In fact, PO Perez did not even recall if § 87(2)(b) had “placed his hands on him” at all. His justification for the arrest was based entirely on § 87(2)(b)’s refusal to move after being asked to do so “three or four times,” and PO Perez stated that he had not been injured as a result of this incident. None of the other officers or civilians explicitly reported seeing § 87(2)(b) being asked to move three of four times. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Based on this assessment, the following is recommended:

Allegation A – PO Luis Perez arrested § 87(2)(b)

§ 87(2)(g) – Penal Law 240.20 cites “congregation...in a public place and refusal to comply with a lawful order to disperse,” and “fighting, violent, or threatening behavior” as violations of the Disorderly Conduct statute (Encl. 1A). § 87(2)(b), § 87(2)(g)

In PD v. Gentileco (78034/02, 2003), the administrative law judge found that a civilian’s protest about a parking summons did not constitute a violation of the aforementioned disorderly conduct statute because the civilian’s protests were not violent, threatening, or tumultuous. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B – PO Luis Perez used physical force against § 87(2)(b)

§ 87(2)(g) - § 87(2)(b) alleged that PO Perez struck him into a wall of mailboxes as he was arresting him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) Sgt. Connolly said that she later learned that § 87(2)(b)'s level of resistance was more intense than she initially believed, however she chose to have § 87(2)(b) released with only a summons after conferring with the officers who arrested § 87(2)(b). PO Nunez said that § 87(2)(b) did not resist at all and PO Perez did not report that he was injured although PO Hart said that PO Perez might have sustained a cut.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) all witnesses did say that § 87(2)(b)'s arresting officer struck him into the wall of mailboxes inside the vestibule as he was being arrested. § 87(2)(b), § 87(2)(g)

Patrol Guide procedure 203-11 directs officers when effecting an arrest to use "only that amount of force necessary to overcome resistance." In *Police Department v. Seligson*, OATH Index No. 1621/00 (Sept. 12, 2000), the ALJ held that "...the extent to which the [complaining victim] was or was not injured is ultimately not determinative of the excessive force charged. Proof of injury is not required to sustain the excessive force charge. "

Similarly, in *Police Department v. Barrett, et. al.*, OATH Index Nos. 124-25, 130/92, the ALJ found that [subject officer's] force was excessive in this context even if [the complaining victim] suffered no injury at all." The judge continued, noting that the subject officer "had no reasonable basis to use any force, let alone the force that [he] resorted to.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C – PO Harvin Hart used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation D – PO Fabio Nunez used physical force against § 87(2)(b)

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED].

Allegation E – PO Carl Benett used physical force against § 87(2)(b)

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation F – PO Carl Benett used physical force against § 87(2)(b)

Though § 87(2)(b) [REDACTED] did not report an allegation of force used against her, § 87(2)(b) [REDACTED] specifically stated that § 87(2)(b) [REDACTED] approached § 87(2)(b) [REDACTED] during his arrest, and that PO Benett subsequently used force to prevent her from interfering with the arrest. § 87(2)(b), § 87(2)(g) [REDACTED] PO Benett did not recall if he prevented § 87(2)(b) [REDACTED] from approaching § 87(2)(b) [REDACTED]. According to police procedure, officers are mandated to maintain order during an arrest, and often times this mandate requires officers to use force against people who are interfering with, or reasonably perceived as about to interfere with, a lawful arrest. § 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: